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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA

7 STEPHAN LEE DONLEY, ) 1:05-cv-00378-AWI-TAG HC  
8 Petitioner, )  
9 v. ) ORDER FOR PETITIONER TO SUPPLEMENT  
10 ) OBJECTIONS TO REPORT AND  
11 PEOPLE OF THE STATE ) RECOMMENDATION TO DISMISS  
OF CALIFORNIA, ) (Doc. 12)  
12 Respondent. )  
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14 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  
15 pursuant to 28 U.S.C. § 2254. On February 14, 2005, Petitioner filed a petition for writ of  
16 habeas corpus in this Court. (Doc. 1).

17 On December 8, 2005, the Magistrate Judge issued a Report and Recommendation  
18 recommending that the Petition be dismissed for failure to comply with the one-year statute of  
19 limitations in the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C.  
20 § 2244(d)(1). (Doc. 11). The Report and Recommendation gave all parties an opportunity to file  
21 objections within 30 days. (Id.).

22 On December 19, 2005, Petitioner filed objections, asserting that he has suffered from  
23 mental illness since 1997. (Doc. 12). Petitioner claimed that during the period of time when  
24 AEDPA’s one-year statute of limitations ran he “was at the worst [sic] point of [his] illness.”  
25 (Doc. 12, p. 1). Petitioner also indicated that he was willing to “let the court obtain all my  
26 medical records.” (Id. at p. 2). In that regard, Petitioner included that names and addresses of  
27 several mental health professionals who had records that would, according to Petitioner, support  
28 his claims.

1       As the Court explained in the Report and Recommendation of December 8, 2005, the  
2 limitations period is subject to equitable tolling if "extraordinary circumstances beyond a  
3 prisoner's control" have made it impossible for the petition to be filed on time. Calderon v. U.S.  
4 Dist. Ct. (Kelly), 163 F.3d 530, 541 (9<sup>th</sup> Cir. 1998), citing, Alvarez-Machain v. United States,  
5 107 F.3d 696, 701 (9<sup>th</sup> Cir. 1996), cert denied, Berellez v. Alvarez-Machain, 522 U.S. 814  
6 (1997). "When external forces, rather than a petitioner's lack of diligence, account for the failure  
7 to file a timely claim, equitable tolling of the statute of limitations may be appropriate." Miles v.  
8 Prunty, 187 F.3d 1104, 1107 (9<sup>th</sup> Cir. 1999). Therefore, equitable tolling applies only where a  
9 petitioner has diligently pursued his claims, but has in some "extraordinary way" been prevented  
10 from asserting those claims.

11       Here, by raising the issue of his mental illness, Petitioner is presumably contending that  
12 his mental illness was sufficiently debilitating to have prevented him in an "extraordinary way"  
13 from asserting his habeas claims in a timely manner. Apart, however, from his generalized  
14 assertion of mental illness and his listing of various mental health professionals, Petitioner has  
15 provided no corroborating evidence or further details regarding the nature of his condition, when  
16 it arose, and how it might have affected his ability to comply with AEDPA's one-year statute of  
17 limitations. Without making such a *prima facie* showing of entitlement to equitable tolling, the  
18 Court is reluctant to withdraw the Report and Recommendation. Nor, as Petitioner implicitly  
19 suggests, is the Court in a position to solicit medical reports from the listed mental health  
20 professionals regarding these matters. Petitioner has the burden of making at least a colorable  
21 showing regarding his entitlement to equitable tolling before the Court will consider withdrawing  
22 the Report and Recommendation.

23       The Court will permit Petitioner to supplement his objections by providing medical  
24 records, letters from mental health professionals, and any other documentation he may have to  
25 support his claim of entitlement to equitable tolling.

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## ORDER

Accordingly, the Court HEREBY ORDERS that, within thirty (30) days of the date of service of this Order, Petitioner is required to file a supplement to his objections to the Magistrate Judge's Report and Recommendation. The supplement should be entitled "Supplement to Objections to Report and Recommendation," and should contain evidence that supports his claim of mental illness and his entitlement to equitable tolling.

IT IS SO ORDERED.

Dated: January 9, 2006  
j6eb3d

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**/s/ Theresa A. Goldner**  
UNITED STATES MAGISTRATE JUDGE